

ORIGINAL

KIRKLAND & ELLIS LLP
153 East 53rd Street
New York, New York 10022-4611
(212) 446-4800
Eric F. Leon (EL-5780)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BILL KOLB JR. SUBARU, INC.,

Plaintiff,

- against -

IDEARC MEDIA CORP.,

Defendant.

Case No.:

NOTICE OF REMOVAL

08 CIV. 4212
JUDGE CONNER

FILED
U.S. DISTRICT COURT
2008 JUN -2 P 10 35
S.D. OF N.Y. N.Y.

Defendant Idearc Media Corp. ("Idearc") hereby removes the case entitled Bill Kolb Jr. Subaru, Inc. v. Idearc Media Corp., Index No. 02660/08, now pending in the Supreme Court of the State of New York, County of Rockland. In support of removal, Idearc submits the summons and complaint served on it by the plaintiff in this case and states as follows:

1. Jurisdiction: This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), and this action is therefore removable under 28 U.S.C. § 1441, in that, as set forth herein, it is a civil action where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

2. Background to this Dispute: Plaintiff alleges that Idearc wrongfully refused to allow plaintiff to place advertisements in the 2008 Verizon Yellow Pages directories after plaintiff failed to pay for its 2007 advertisements. Plaintiff brings claims for breach of contract and tortious interference with prospective contracts.

3. Commencement of the Action and Service of Process: Plaintiff filed the instant action on or about March 20, 2008 in Supreme Court of the State of New York for Rockland County. The summons and complaint were served on Idearc's registered agent on April 7, 2008. (A copy of the summons and complaint is attached hereto as Exhibit A.)


4. Diversity of Citizenship: Pursuant to Rule 81.1 of the Local Civil Rules for the Southern and Eastern Districts, plaintiff Bill Kolb Jr. Subaru, Inc. is a New York Corporation with its principal place of business in New York (Compl. ¶ 1). Defendant Idearc is a Delaware corporation with its principal place of business in Texas (Compl. ¶ 2). Thus, there is complete diversity of citizenship between plaintiff and Idearc.

5. Timely Removal: This Notice of Removal is timely filed as required by 28 U.S.C. § 1446(b). Idearc was served with the summons and complaint on April 7, 2008. In accordance with 28 U.S.C. § 1446(a) and Local Rule 81.1, and as noted above, that complaint is attached hereto as Exhibit A. No other process, pleadings or orders have been served upon Idearc to date in the action being removed.

6. Amount in Controversy: Plaintiff's complaint seeks compensatory damages of at least \$750,000.00. Thus, the amount in controversy in this action exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. Notice: Written Notice of the filing of this removal petition shall be given to plaintiff and a true copy of this petition will be filed with the clerk of the Supreme Court of the State of New York for Rockland County, as provided by law.

Dated: New York, New York
May 2, 2008


Eric F. Leon
(EL-5780)
KIRKLAND & ELLIS LLP
153 East 53rd Street
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Defendant
IDEARC MEDIA CORP.

TO: Kevin T. Mulhern, P.C.
Prel Plaza - Suite 8
60 Dutch Hill Road
Orangeburg, New York 10962
(845) 398-0361
Attorneys for Plaintiff

CLERK
Supreme Court of the State of New York
County of Rockland

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

Date Del: 4/7/08
Time: 3:15 AM
Initials: ER

-----X
BILL KOLB JR. SUBARU, INC.,

Plaintiff,

SUMMONS

- against -

Index No. 2008-02660

IDEARC MEDIA CORP.,

Defendant.
-----X

FILED MC

MAR 20 2008

**ROCKLAND COUNTY
CLERK'S OFFICE**

To the above named Defendant(s):

You are hereby Summoned and required to serve upon Plaintiffs' attorneys an answer to the Complaint in this action within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.


The basis of the venue designated is that the residence and/or principal place of business of Defendants is located within this district.

Dated: March 19, 2008

KEVIN T. MULHEARN, P.C.

Defendan's address:

IDEARC MEDIA CORP.
2200 W. Airfield Drive
DFW Airport
Texas 75261-9810 (Dock A)


KEVIN T. MULHEARN, ESQ.
Prel Plaza - Suite 8
60 Dutch Hill Road
Orangeburg, New York 10962
(845)398-0361
Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
BILL KOLB JR. SUBARU, INC.,

Plaintiff,

- against -

IDEARC MEDIA CORP.,

Defendant.
-----X

COMPLAINT

Index No.

2008-02660
FILED MC

MAR 20 2008

**ROCKLAND COUNTY
CLERK'S OFFICE**

Plaintiff, BILL KOLB JR. SUBARU, INC. ("BILL KOLB"), by and
through its attorneys, Kevin T. Mulhearn, P.C., complaining of the Defendant,
hereby alleges that:

PARTIES:

1. Plaintiff, BILL KOLB JR. SUBARU, INC., is a New York corporation which conducts business in New York State, and at all material times has maintained its primary place of business at 252 Route 303, Orangeburg, New York 10962.
2. Defendant, IDEARC MEDIA CORP. ("IDEARC"), is, upon information and belief, a corporation organized under the laws of the State of Texas, and conducts business in the State of New York, and maintains its principal place of business at 2200 W. Airfield Drive, DFW Airport, Texas 75261-9810, (Dock A).

FACTS:

3. Bill Kolb Jr. Subaru has been engaged in the business of automobile sales and service from in or about November 1998 to present.
4. The automobile market is highly competitive, and numerous automobile sellers – including Plaintiff – rely heavily on advertising in order to stay competitive in the market.
5. At all material times, Defendant IDEARC has been a publisher of Verizon Yellow pages directory advertising.
6. At all material times, Defendant IDEARC has communicated with customers, and prospective customers, with respect to advertising issues, such as ad copy, costs, and ad placement, in connection with its Verizon Yellow Pages directories.
7. At all material times, Plaintiff relied on Defendant IDEARC to provide it with essential advertising in the Verizon Yellow Pages directory.
8. At all material times, Plaintiff relied on said advertising in order to compete in its automobile sales market, and to remain competitive in the automobile sales industry. In previous years, Bill Kolb Jr. Subaru's ads in the Verizon Yellow Book directories were always – at the request of Plaintiff – directly under the Subaru banner.

9. In 2007, Plaintiff ordered a number of Verizon Yellow Pages advertisements from Defendant IDEARC.
10. In 2007, Plaintiff gave specific instructions to Defendant IDEARC as to the precise necessary location for Verizon Yellow Pages advertisements and gave specific instructions to Defendant IDEARC for Defendant to post said advertisements, in all directory books, directly under the Subaru banner.
11. At all material times, Plaintiff relied on Defendant IDEARC to place Plaintiffs ads in the proper location in Defendant IDEARC's Verizon Yellow Pages directories, and to post said advertisements, in all directory books, directly under the Subaru banner.
12. At all material times, Defendant IDEARC had actual or constructive knowledge of Plaintiff's aforesaid reliance.
13. Nevertheless, in 2007, on multiple occasions, Defendant IDEARC failed or refused to place Plaintiff's ads in the specifically mandated location in Defendant IDEARC's Verizon Yellow Pages directories, and failed and refused to post said advertisements, in all directory books, directly under the Subaru banner.
14. Beginning in or about June, 2007, Plaintiff's President, Bill Kolb Jr., communicated with Defendant IDEARC's agents or employees, voiced his

dissatisfaction with the aforesaid 2007 advertisements, and expressed his refusal to pay for said advertisements.

15. Thereafter, Plaintiff has attempted to negotiate with Defendants IDEARC – to no avail – to be able to advertise in the 2008 directories, without having to pay for the deficient 2007 ads.
16. Defendant, IDEARC, however, has refused to permit Plaintiff to place advertisements in its 2008 directories because of the dispute over the 2007 advertisements and payments thereof.
17. Plaintiff has notified Defendant IDEARC that his inability to advertise in the 2008 Verizon Yellow Pages directories will cause it a substantial diminution of business.

**AS AND FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

18. Plaintiff repeats and realleges paragraphs “1” through “17” herein, as if each has been fully set forth at length.
19. In 2007, Plaintiff and Defendant formed a contract with respect to the 2007 Verizon Yellow pages directories advertisements, agreed on all material items (i.e., price), and each party provided consideration to the other for the performance of its contractual obligations.

20. By reason of the aforesaid, Defendant IDEARC breached said contract with Plaintiff by, *inter alia*, providing a deficient product which materially diminished the agreed upon advertisements, and materially diminished the value and worth of said advertisements to Plaintiff.
21. As a direct and proximate result of Defendant IDEARC's aforesaid breach of contract, Plaintiff suffered substantial damages, including but not limited to lost business, lost profits, loss of brand value, and loss of business goodwill.
22. Plaintiff, therefore, is entitled to receive compensatory damages from Defendant IDEARC in a sum not less than \$250,000.00.

**AS AND FOR A SECOND CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH PROSPECTIVE ADVANTAGE**

23. Plaintiff repeats and realleges paragraphs "1" through "22" herein, as if each has been fully set forth at length.
24. At all material times, Plaintiffs had prospective contracts with potential purchasers of automobiles in Rockland County and surrounding areas, particularly with respect to those potential customers generated by advertising.

25. At all material times, Defendant knew of, or should have known of, Plaintiff's aforesaid prospective contracts with potential purchasers of automobiles, particularly with respect to those potential customers generated by advertising.
26. By reason of the aforesaid, Defendant IDEARC, by the use of "wrongful means," intentionally interfered with respect to Plaintiff's prospective contracts with potential customers generated by advertising.
27. Said "wrongful means" include, but are not limited to fraud and misrepresentations in that Defendant IDEARC, at various times in 2007, made false and misleading misrepresentations to Plaintiff with respect to the placement of Plaintiff's ads in its 2007 directories.
28. Said "wrongful means" also include, but are not limited to, undue economic pressure, in that Defendant IDEARC's refusal to permit Plaintiff to place 2008 advertisements in its directories, without cause or justification, constituted such undue economic pressure.
29. As a direct and proximate result of Defendant's conduct, moreover, Plaintiff has suffered, and will continue to suffer substantial damages, including lost contracts, lost business, lost sales, lost profits and a loss of business goodwill.

30. Moreover, Defendant's conduct, in aggregate, demonstrates a willful, wanton and reckless disregard of Defendant's civil obligations and Plaintiff's rights, and thus gives rise to punitive damages.
30. Plaintiff, therefore, is entitled to compensatory damages in a sum not less than \$500,000.00, and punitive damages in a sum not less than \$500,000.00.

WHEREFORE, based on the aforesaid, Plaintiff respectfully requests an Order and Judgment against Defendant IDEARC, as follows:

1. As and for its First Cause of Action (Breach of Contract), compensatory damages in a sum not less than \$250,000.00;
2. As and for its Second Cause of Action (Tortious Interference with Prospective Advantage), compensatory damages in a sum not less than \$500,000.00, and punitive damages in a sum not less than \$500,000.00;
3. All necessary injunctive relief, including, if applicable, a mandamus Order mandating Defendant to provide Plaintiff with continued advertising in its Verizon Yellow Pages directories, at prevailing rates and terms;

4. The costs and disbursements of this action as well as reasonable attorney's fees; and
5. Any other, different or further relief as to this Court may seem just, proper or necessary.

Dated: March 14, 2008
Orangeburg, New York

Respectfully submitted,

KEVIN T. MULHEARN, P.C.

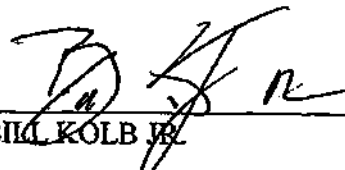
A handwritten signature in black ink, appearing to read 'Kevin T. Mulhearn', written over a horizontal line.

By: Kevin T. Mulhearn, Esq.
60 Dutch Hill Road, Suite 8
Orangeburg, New York 10962
Phone: (845) 398-0361
Fax: (845) 398-3836

VERIFICATION

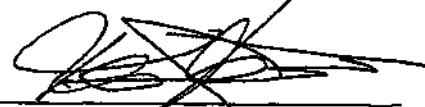
STATE OF NEW YORK)
) ss:
COUNTY OF ROCKLAND)

Bill Kolb Jr., being sworn says: I am the Plaintiff in the action herein; I have read the annexed Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.



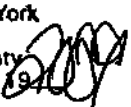
BILL KOLB JR.

Sworn to before me this
14th day of March, 2008



Notary Public

KEVIN T MULHEARN
Notary Public, State of New York
No. 02MU5047687
Qualified in Rockland County
Commission Expires August 7, 2011



Index No. **2008-02660**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND**

BILL KOLB JR. SUBARU, INC.,

Plaintiff,

- against -

IDEARC MEDIA CORP.,

Defendant.

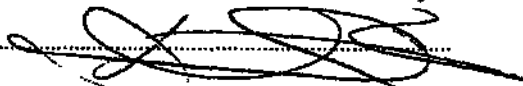
SUMMONS and COMPLAINT

***Kevin T. Mulhearn, P.C.
Attorneys for Plaintiff
60 Dutch Hill Rd., Suite 8
Orangeburg, NY 10962
(845)398-0361***

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: March 19, 2008

Signature.....



Print Signer's Name: KEVIN T. MULHEARN

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

04/07/2008

CT Log Number 513285671



TO: Joe Garza, Jr.
Idearc Media Corp.
2200 West Airfield Drive, TX 29, P.O. Box 619810
DFW Airport, TX 75261-4008

RE: Process Served in Texas

FOR: Idearc Media Corp (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Bill Kolb Jr., Subaru, Inc., Pltf. vs. Idearc Medica Corp., Dft. <i>Name discrepancy noted.</i>
DOCUMENT(S) SERVED:	Summons, Original Complaint, Verification, Summons Cover
COURT/AGENCY:	Supreme Court, County of Rockland, NY Case # 200802660
NATURE OF ACTION:	Breach of contract, providing a deficient product which materially diminished the agreed upon advertisements
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Process Server on 04/07/2008 at 15:15
APPEARANCE OR ANSWER DUE:	20 days after service of this summons, exclusive of the day of service
ATTORNEY(S) / SENDER(S):	Kevin T. Mulhearn Kevin T. Mulhearn, P.C. 60 Dutch Hill Road Suite 8 Orangeburg, NY 10962 845-398-0361
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day , 798914410674 Image SOP - Page(s): 12 Email Notification, Nancy Sanders nancy.sanders@idearc.com Email Notification, Darlene Stecz-Hunter Phyllis.D.SteczHunter@idearc.com Email Notification, Joe Garza, Jr. joe.garza@idearc.com
SIGNED:	C T Corporation System
PER:	Beatrice Casarez
ADDRESS:	350 North St Paul Street Suite 2900 Dallas, TX 75201
TELEPHONE:	214-932-3601

Page 1 of 1 / MS

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